IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE.

WRIT PETITION NO. 5899 OF 2000

Mumbai Agricultural Produce
Market Committee ..... Petitioner.

versus

The State of Maharashtra & Ors..... Respondents.

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Shri N.N. Bhadrashete for the petitioner.
Shri Y.D. Mulani AGP for the State - respondents 1 to 3

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CORAM ; V.G.PALSHIKAR &
MRS. RANJANA DESAI, JJ.

DATED; SEPTEMBER, 2004.

P.C.;

1. By this petition, Mumbai Agricultural Produce Market Committee has challenged the action of the respondent State in demanding a sum of Rs. 23,88,500/- as per Government Resolution dated 5-10-1995. The petitioner has also challenged the Resolution dated 5-10-1995 as void or in the alternative its application to the petitioner as unreasonable.

2. The facts giving rise to the present petition

stated briefly are under:

3. The undisputed facts are that the dues of the petitioner Committee are transmitted to the Government officials functioning under the Maharashtra Land Revenue Code for recovery of the sums due to the Government as arrears of land revenue. 218 such certificates were issued by the petitioner between the period 1995-97 covering a sum of Rs. 23,88,500/- pertaining to recovery of amount of lease premium. The respondent State and its officials issued appropriate notices to various persons from whom the sum was due and on receipt of this notice the sums were recovered.

4. Thereafter on 23-9-1997 respondent no.3 issued notice to the petitioner annexing thereby a copy of the Government Resolution dated 5-10-1995 and demanded 10% of the amount recovered. Correspondence ensured between the petitioner and the State and on 6-10-1998 petitioner was told to pay 50% of the amount in dispute. However this deposit was not made and opinion of the Law and Judiciary department was obtained. The Law and Judiciary department gave its opinion on 1-2-1999 wherein it was categorically observed by the concerned Secretary that neither Chapter XI and XIV of the Maharashtra Land Revenue Code 1966 nor the rules

framed thereunder provide for charging 10% service charge as contemplated in Government Resolution dated 5-10-1995 on recovery of dues under various acts as arrears of Land Revenue to the authority asking revenue authorities to recover its dues. It was also stated that if such recovery is to be made appropriate provisions of law and rules will have to be made and the recovery will have to be postponed. Inspite of this opinion given by the department, the respondent continued to claim 10% of the amount. Hence this petition.

5. In the event of the opinion gioven by the Law and Judiciary department, the Governnment Resoltuion dated 5-10-1995 is obviously without jurisdiction. Infact subsequently by Government Resolution dated 22-6-1999, the 1995 Resolution is modified and the petitioner is exempted from application of that Resolution. However inspite of such modifications the respondent continued to demand the money on the ground that it is due prior to the Resolution dated 22-6-1999.

6. In our opinion this demand obviously is illegal and is liable to be quashed and after having exempted the petitioner from the Resolution of 5-10-1995 no claim to any sum can be made under that Resoltuion and the

application of which having been exempted in so far as petitioner is concerned, the demand is wholly illegal. In the result therefore the petition succeeds and it is allowed. The demand of Rs. 23,88,500/- is quashed as unsustainable in law in view of the Government Resolution dated 22-6-1999 as opined by the Law and Judiciary Department and the recovery in no event can be effected. There shall be no order as to costs.

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